

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. CV 22-4908 MEMF (KS) Date: October 18, 2022

Title *Vincent Darnell Larry v. T. Allen, Warden*

Present: The Honorable: Karen L. Stevenson, United States Magistrate Judge

Gay Roberson
Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Petitioner: n/a

Attorneys Present for Respondent: n/a

Proceedings: (IN CHAMBERS) ORDER TO SHOW CAUSE RE: DISMISSAL

On July 15, 2022, Petitioner, a California state prisoner proceeding *pro se*, filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 (the “Petition”) challenging the California courts’ affirmance of his March 2019 conviction of murder with firearm and criminal street gang enhancements. (Dkt. No. 1 at 2.) On September 1, 2022, Respondent filed a Motion to Dismiss the Petition without prejudice (the “Motion”) based on the doctrine of abstention “because petitioner’s second direct appeal is still pending in state court.” (Dkt. No. 7.)

Pursuant to the Court’s scheduling order issued in this action on July 27, 2022, Petitioner’s opposition to the Motion was due on or before October 3, 2022. (Dkt. No. 4 at 3; Dkt. No. 7 at 10.)

Petitioner’s opposition is now more than two weeks past due. Local Rule 7-12 states that a party’s failure to file a required document such as an opposition to a motion “may be deemed consent to the granting . . . of the motion.” Further, pursuant to Federal Rule of Civil Procedure 41(b), an action may be subject to involuntary dismissal if a plaintiff “fails to prosecute or to comply with these rules or a court order.” Thus, the Court could properly recommend dismissal of the action for Petitioner’s failure to oppose the Motion and timely comply with the Court’s scheduling order.

\\

\\

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. CV 22-4908 MEMF (KS)

Date: October 18, 2022

Title *Vincent Darnell Larry v. T. Allen, Warden*

However, in the interests of justice, Petitioner is **ORDERED TO SHOW CAUSE on or before November 8, 2022** why the action should not be dismissed under Local Rule 7-12 and Federal Rule of Civil Procedure 41(b). In order to discharge this Order and proceed with this action, Petitioner must file by the November 8, 2022 deadline either:

(1) an opposition to the Motion in compliance with the Local Rules and this Court’s scheduling order; or

(2) a request for an extension to file an opposition accompanied by a sworn declaration (not to exceed 3 pages) establishing good cause for Petitioner’s failure to timely respond to the Motion.

Alternatively, Petitioner may discharge this order and dismiss this case by filing a signed document entitled a “Notice of Voluntary Dismissal” requesting the voluntary dismissal of the action without prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

Petitioner is cautioned that the failure to timely comply with this order may lead to a recommendation of dismissal based on Local Rule 7-12 and Federal Rule of Civil Procedure 41(b).

Initials of Preparer

:

gr